

November 26, 2018

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 17-318 & 16-306, GN Docket No. 12-268

Dear Ms. Dortch:

On Wednesday November 21, the undersigned of the National Association of Broadcasters met with Matthew Berry, Chief of Staff to Chairman Pai, to discuss the national TV ownership rule and the on-going repacking of the TV band. Consistent with NAB's comments,¹ I reiterated that the Commission should, in effect, maintain the status quo with regard to the national cap. That is, if the Commission continues to employ a 39 percent national TV cap, it should determine compliance with it by accounting for all TV stations at 50 percent of their theoretical audience reach.

As discussed in detail in NAB's filings, the premise underlying the national audience reach cap – that stations reach all the TV households in the DMAs in which they are located – is a fiction, which significantly exaggerates the competitively effective reach of TV station groups whose actual audiences and advertising revenues have been fragmented by competition from numerous multichannel and online video providers. NAB's proposal to account for both UHF and VHF stations at half their theoretical audience reach still overstates their actual marketplace reach and therefore would be a conservative method of attributing stations under a 39 percent national cap.² I also stressed that the record before the FCC does not show any actual harms caused by the current levels of TV station ownership nationwide. To the contrary, today's video marketplace offers an unprecedented – and still growing –

¹ Comments of NAB, MB Docket No. 17-318 (Mar. 19, 2018) (NAB Comments); Reply Comments of NAB, MB Docket No. 17-318 (Apr. 18, 2018) (NAB Reply Comments).

² See NAB Comments at 25-34.

abundance of choices for consumers and options for advertisers,³ and the Commission would have no basis for rolling back the existing levels of TV station ownership.⁴

In addition, I discussed NAB's concerns about the post-incentive auction repack of the broadcast TV band. I stressed the need for the Commission to build flexibility into its repacking schedule to account for stations that are unable to meet their scheduled repack dates due to circumstances beyond their control. This will be particularly important as the repack moves into Phase 2 and beyond, given the delays that rigging companies are already experiencing.⁵

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

Rick Kaplan
General Counsel and Executive Vice President
Legal and Regulatory Affairs

cc: Matthew Berry

³ See NAB Comments at 11-19 and Attachments A-E.

⁴ See NAB Comments at 22-25; NAB Reply Comments at 14-20.

⁵ Letter from Paul A. Cicelski to Marlene H. Dortch, MB Docket No. 16-306, GN Docket No. 12-268 (Nov. 12, 2018).